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10/798,698	03/10/2004	Lior Levy	P18439	6162
46915 7590 08/03/2009 KONRAD RAYNES & VICTOR, LLP. ATTN: INT77 315 SOUTH BEVERLY DRIVE, SUITE 210 BEVERLY HILLS, CA 90212				
EXAMINER				
MAL, KEVIN S				
ART UNIT		PAPER NUMBER		
2456				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

krvuspto@ipmatters.com

### Office Action Summary

**Application No.**

10/798,698

**Applicant(s)**

LEVY ET AL.

**Examiner**

KEVIN S. MAI

**Art Unit**

2456

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 April 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2,4-10,12-14,16-21 and 23-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-10,12-14,16-21 and 23-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. This Office Action has been issued in response to Applicant's Amendment filed April 24, 2009.
2. Claim 1 has been amended. Claims 1, 2, 4-10, 12-14, 16-21 and 23-27 have been examined and are pending.

### ***Response to Arguments***

3. Applicant's arguments filed April 24, 2009 have been fully considered but they are not persuasive.
4. Applicant's arguments with respect to claim 1 have been considered but they are not persuasive. Applicant argues that McIntyre does not disclose sending through the adaptors at least one query to the switches connector the adaptor to determine a status of external ports in each queries switch communicating with the network. Examiner disagrees. Applicant has misinterpreted examiners rejection, Masuyama teaches that limitation except for the portion concerning sending a query. As such applicant's arguments with respect to McIntyre concerning not disclosing querying switches is misdirected.
5. Applicant argues that McIntyre does not disclose in response to determining from the at least one query that no external ports are operational in one non-operational switch, indicating not to transmit data to the adaptor connection to the non-operational switch, wherein the adaptor for which indication is made not to transmit data is functioning and capable of transmitting. Examiner disagrees. Applicant has misinterpreted examiners rejection, Masuyama teaches that limitation except for the portion concerning being in response to a query. As such applicant's

arguments with respect to McIntyre concerning not disclosing transmitting to an operational port if the port connect to a switch having no operational external ports is misdirected.

6. Applicant argues that Examiner has not shown where McIntyre teaches the claim requirement of indicating to transmit data to one adaptor connected to one switch having at least one operational external port in response to determining from the at least one query that at least one external port in the switch is operational when the switch was previously indications as non-operational. Examiner disagrees. Applicant has misinterpreted examiners rejection, Masuyama teaches that limitation except for the portion concerning being in response to a query, which has been addressed in the rejection. As such applicant's arguments with respect to examiner not showing in McIntyre are misdirected.

7. It appears to examiner that applicant may have misinterpreted the rejection supplied. The lines containing statements "Masuyama does not explicitly disclose" refers to the entire limitation as if there were no square brackets. For example, "Masuyama does not explicitly disclose **in response to determining [from the at least one query] that no external ports are operational in one non-operational switch, indicating not to transmit data to the adaptor connected to the non-operational switch, wherein the adaptor for which indication is made not to transmit data is functioning and capable of transmitting**", refers to the fact that Masuyama does not explicitly disclose the entire limitation. However, Masuyama does disclose the portion outside of the square brackets, in this case Masuyama discloses everything except "from the at least one query". As such McIntyre was brought in to disclose that portion of the limitation, and not the entire limitation as argued by the applicant. Another way to have written it would have been "Masuyama discloses **in response to determining that no external ports**

**are operational in one non-operational switch, indicating not to transmit data to the adaptor connected to the non-operational switch, wherein the adaptor for which indication is made not to transmit data is functioning and capable of transmitting.** However, Masuyama does not explicitly disclose the determining occurring **from the at least one query.**

8. Applicant's arguments with respect to the remaining claims have been considered but are not persuasive for the same reasons recited above.

#### ***Claim Objections***

9. Claim 1 objected to because of the following informalities: Claim 1 does not end in a period. Furthermore claim 1 recites “a adaptors”. Appropriate correction is required.

10. Claims 4 and 23 are objected to because of the following informalities: Claims 4 and 23 are dependent on canceled claims. Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 112***

11. In view of the amendments made to claim 1 the pending claim rejection under 35 USC § 112 has been withdrawn.

#### ***Claim Rejections - 35 USC § 103***

12. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

13. Claims 1, 2, 4-7, 9, 10, 12-14, 16, 18-21 and 23-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pub. No. 2005/0058063 to Masuyama et al. (hereinafter “Masuyama”) and further in view of US Pat. No. 6381218 to McIntyre et al. (hereinafter “McIntyre”).

14. **As to Claim 1, Masuyama discloses a method performed by an intermediate device driver executing in a server, comprising:**

**managing transmission of data through a adaptors connected to switches** (Figure 1 of Masuyama discloses a plurality of NID's connected to switches). Masuyama does not explicitly disclose, **wherein the intermediate device driver communicates with the adaptors through at least one adaptor device driver;**

Masuyama does not explicitly disclose **[sending through the adaptors at least one query to the switches connected to the adaptor to] determine a status of external ports in each queried switch communicating with a network** (Paragraph [0027] of Masuyama discloses the switch detecting link loss on the uplink and causing disruption to the downlink in order to trigger failover. Thus it is seen that Masuyama discloses detecting switch external port statuses and causing failover in response to such an event); **and**

Masuyama does not explicitly disclose **in response to determining [from the at least one query] that no external ports are operational in one non-operational switch, indicating not to transmit data to the adaptor connected to the non-operational switch, wherein the adaptor for which indication is made not to transmit data is functioning and capable of transmitting** (Paragraph [0027] and Figure 2 of Masuyama disclose that when the switch detects

link loss on the uplink (external port), the fail-over circuit automatically disrupts the communications on the downlink to trigger fail-over to another switch. Then paragraph [0026] discloses that when link loss on the downlink is discovered the system automatically fails-over from one NID to another NID. Thus it is seen that the original NID is still functioning and capable of transmitting since it is the switch that has detected link loss on the uplink); **and** Masuyama does not explicitly disclose **indicating to transmit data to one adaptor connected to one switch having at least one operational external port in response to determining [from the at least one query] that at least one external port in the switch is operation when the switch was previously indicated as non operational** (Paragraph [0037] of Masuyama discloses if the connection has been restored on the uplink (previously non-operational becoming operational) the downlink is also restored. This triggers the system to return to normal and allows the original NID to resume operation);

Masuyama does not explicitly disclose wherein the intermediate device driver communicates with the adaptors through at least one adaptor device driver.

However, McIntyre discloses this (Figure 3 and column 6 lines 43-50 of McIntyre disclose 4 NIC drivers supporting 4 NICs each connected to an intermediate driver)

It would have been obvious to one of ordinary skill in the art at the time of invention to combine the failover system as disclosed by Masuyama, with utilizing drivers as disclosed by McIntyre. One of ordinary skill in the art would have been motivated to combine to use a known technique to implement a known system. Using drivers to perform failover is well known in the art as demonstrated in McIntyre.

Masuyama does not explicitly disclose sending through the adaptors at least one query to determine a status of ports.

However, McIntyre discloses this (Column 2 lines 1-20 disclose the intermediate driver instructing the secondary NIC to transmit a directed heartbeat packet to the primary NIC to determine the status)

It would have been obvious to one of ordinary skill in the art at the time of invention to combine the failover system as disclosed by Masuyama, with detecting statuses with a query as disclosed by McIntyre. One of ordinary skill in the art would have been motivated to combine because it is seen as simple substitution of one known element for another. Masuyama and McIntyre implement different systems to detect port failure in order to cause failover, it is seen that it would be obvious to implement either system to detect the failure.

Masuyama does not explicitly disclose actions being done in response to the query.

However, McIntyre discloses this (Figure 8 and column 13 lines 35-67 of McIntyre disclose if the intermediate drive detects failure of the primary port, the intermediate driver sends commands to the NIC drivers to cause failover to occur. It is further explained that the status of the ports was detected via a heartbeat packet which is seen to be a query. Column 2 lines 1-20 disclose how the intermediate driver sends these directed heartbeat packets to test the ports)

It would have been obvious to one of ordinary skill in the art at the time of invention to combine the failover system as disclosed by Masuyama, with performing failover in response a query as disclosed by McIntyre. One of ordinary skill in the art would have been motivated to combine because it is seen as simple substitution of one known element for another. Masuyama



and McIntyre implement different systems to detect port failure in order to cause failover, it is seen that it would be obvious to implement either system to detect the failure.

15. **As to Claim 2**, Masuyama-McIntyre discloses the invention as claimed as described in claim 1, **further comprising:**

**maintaining a switch map including information associating the adaptors with the switch to which the adaptors connect and a status of the external ports on the switches** (Column 9 lines 50-55 of McIntyre disclose a status table that maintains the status of each of the ports including the NICs); **and**  
**updating the status of the external ports to the status determined from the at least one query** (Column 10 lines 35-40 of McIntyre disclose updating the status table according to the heartbeat packets).

It would have been obvious to one of ordinary skill in the art at the time of invention to combine the method of claim 1 as disclosed by Masuyama-McIntyre, with maintaining a switch map and updating the switch map according to a query as disclosed by McIntyre. One of ordinary skill in the art would have been motivated to combine to be able to view the status of multiple ports.

16. **As to Claim 4**, Masuyama-McIntyre discloses the invention as claimed as described in claim 3, **further comprising:**

**performing a failover to the switch that is operational from the switch that is non-operational in response to determining from the at least one query that one switch is non-**

**operational** (Paragraph [0027] and Figure 2 of Masuyama discloses when switch (40) detects link loss on the uplink, the fail-over automatically occurs to trigger fail-over to switch (44). Then figure 8 and column 13 lines 35-67 of McIntyre disclose if the intermediate drive detects failure of the primary port, the intermediate driver sends commands to the NIC drivers to cause failover to occur. It is further explained that the status of the ports was detected via a heartbeat packet which is seen to be a query. Column 2 lines 1-20 disclose how the intermediate driver sends these directed heartbeat packets to test the ports); **and**

**performing a fallback to the switch that is determined to have at least one operational external port when the switch was previously indicated as non-operational** (Paragraph [0037] of Masuyama discloses that when the connection has been restored on the uplink switch (40) is returned to normal mode which similarly causes the original NID to resume operation. Then figure 8 and column 13 lines 35-67 of McIntyre disclose if the intermediate drive detects failure of the primary port, the intermediate driver sends commands to the NIC drivers to cause failover to occur. It is further explained that the status of the ports was detected via a heartbeat packet which is seen to be a query. Column 2 lines 1-20 disclose how the intermediate driver sends these directed heartbeat packets to test the ports).

Examiner recites the same rationale to combine used in claim 1.

17. **As to Claim 5**, Masuyama-McIntyre discloses the invention as claimed as described in claim 1, **wherein the adaptors are managed as a team and wherein load balancing operations are performed when transmitting data through the adaptors** (Paragraph [0023]

of Masuyama discloses the NIDs can be configured into a team and may be used for purposes such as fail-over, redundancy and load balancing).

18. **As to Claim 6**, Masuyama-McIntyre discloses the invention as claimed as described in claim 1, **wherein each adaptor is connected to a different switch to provide redundant paths to the network** (Figure 1 of Masuyama shows two separate NIDs connected to two separate switches).

19. **As to Claim 7**, Masuyama-McIntyre discloses the invention as claimed as described in claim 1, **wherein each switch and the server are implemented on different printed circuit boards** (Figure 1 of Masuyama discloses the server system 10 having separate servers and switches), **and wherein the server and switch printed circuit board are in a chassis** (Paragraph [0015] of Masuyama discloses six server blades, two Ethernet modules and an embedded remote management module enclosed in a highly integrated 3U enclosure).

20. **As to Claim 9**, Masuyama discloses a system in communication with at least one switch, wherein the switch communicates with a network, comprising: **a plurality of adaptors connected to the at least one switch** (Paragraph [0023] and Figure 1 of Masuyama disclose NID (30a) and NID (30b) to be connected to switch (40) and switch (44) respectively. Then it discloses the other servers may be connected to switches (40 and 44) similarly. Thus it is seen that a plurality of adaptors are connected to each switch);

Masuyama does not explicitly disclose **circuitry executing at least one adaptor device driver providing an interface to the adaptors and an intermediate device driver in communication with the adaptor device drivers, wherein the intermediate device driver causes operations, the operations comprising:**

**managing transmission of data through the adaptors** (Paragraph [0023] of Masuyama discloses the servers containing multiple NIDs for things like fail-over and load balancing. Both of those actions require managing transmission of data through particular adaptors. Thus it is seen that the system manages the transmissions);

Masuyama does not explicitly disclose **sending through the adaptors at least one query to the switches connected to the adaptor to determine a status of external ports in each queried switch communicating with the network** (Paragraph [0027] of Masuyama discloses the switch detecting link loss on the uplink and causing disruption to the downlink in order to trigger failover. Thus it is seen that Masuyama discloses detecting switch external port statuses and causing failover in response to such an event);

Masuyama does not explicitly disclose **in response to determining [from the at least one query] that no external ports are operational in one non-operational switch, then indicating not to transmit data to the adaptor connected to the non-operational switch, wherein the adaptor for which indication is made not to transmit data is functioning and capable of transmitting** (Paragraph [0027] and Figure 2 of Masuyama disclose that when the switch detects link loss on the uplink (external port), the fail-over circuit automatically disrupts the communications on the downlink to trigger fail-over to another switch. Then paragraph [0026] discloses that when link loss on the downlink is discovered the system automatically fails-over

from one NID to another NID. Thus it is seen that the original NID is still functioning and capable of transmitting since it is the switch that has detected link loss on the uplink); **and Masuyama does not explicitly disclose indicating to transmit data to one adaptor connected to one switch having at least one operational external port in response to determining [from the at least one query] that at least one external port in the switch is operational when the switch was previously indicated as non-operational** (Paragraph [0037] of Masuyama discloses if the connection has been restored on the uplink (previously non-operational becoming operational) the downlink is also restored. This triggers the system to return to normal and allows the original NID to resume operation).

Masuyama does not explicitly disclose circuitry executing at least one adaptor device driver providing an interface to the adaptors and an intermediate device driver in communication with the adaptor device drivers.

However, McIntyre discloses this (Figure 3 and column 6 lines 43-50 of McIntyre disclose 4 NIC drivers supporting 4 NICs each connected to an intermediate driver)

Examiner recites the same rationale to combine used in claim 1.

Masuyama does not explicitly disclose sending through the adaptors at least one query to determine a status of ports.

However, McIntyre discloses this (Column 2 lines 1-20 disclose the intermediate driver instructing the secondary NIC to transmit a directed heartbeat packet to the primary NIC to determine the status)

Examiner recites the same rationale to combine used in claim 1.

Masuyama does not explicitly disclose actions being done in response to the query.

However, McIntyre discloses this (Figure 8 and column 13 lines 35-67 of McIntyre disclose if the intermediate drive detects failure of the primary port, the intermediate driver sends commands to the NIC drivers to cause failover to occur. It is further explained that the status of the ports was detected via a heartbeat packet which is seen to be a query. Column 2 lines 1-20 disclose how the intermediate driver sends these directed heartbeat packets to test the ports)

Examiner recites the same rationale to combine used in claim 1.

21. **As to Claim 10**, Masuyama-McIntyre discloses the invention as claimed as described in claim 9, **wherein the operations performed by the intermediate device driver further comprise:**  
**a switch map including information associating the adaptors with the switch to which the adaptors connect and a status of the external ports on the switches** (Column 9 lines 50-55 of McIntyre disclose a status table that maintains the status of each of the ports including the NICs), **wherein the operations performed by the circuitry are further capable of updating the status of the external ports to the status determined from the at least one query** (Column 10 lines 35-40 of McIntyre disclose updating the status table according to the heartbeat packets).

Examiner recites the same rationale to combine used in claim 2.

22. **As to Claim 12**, Masuyama-McIntyre discloses the invention as claimed as described in claim 9, **wherein the operations performed by the intermediate device driver further comprise:**

**performing a failover to the switch that is operational from the switch that is non-operational in response to determining from the at least one query that one switch is non-operational** (Paragraph [0027] and Figure 2 of Masuyama discloses when switch (40) detects link loss on the uplink, the fail-over automatically occurs to trigger fail-over to switch (44). Then figure 8 and column 13 lines 35-67 of McIntyre disclose if the intermediate drive detects failure of the primary port, the intermediate driver sends commands to the NIC drivers to cause failover to occur. It is further explained that the status of the ports was detected via a heartbeat packet which is seen to be a query. Column 2 lines 1-20 disclose how the intermediate driver sends these directed heartbeat packets to test the ports); **and**

**performing a fallback to the switch that is determined to have at least one operational external port when the switch was previously indicated as non-operational** (Paragraph [0037] of Masuyama discloses that when the connection has been restored on the uplink switch (40) is returned to normal mode which similarly causes the original NID to resume operation. Then figure 8 and column 13 lines 35-67 of McIntyre disclose if the intermediate drive detects failure of the primary port, the intermediate driver sends commands to the NIC drivers to cause failover to occur. It is further explained that the status of the ports was detected via a heartbeat packet which is seen to be a query. Column 2 lines 1-20 disclose how the intermediate driver sends these directed heartbeat packets to test the ports).

Examiner recites the same rationale to combine used in claim 1.

23. **As to Claim 13**, Masuyama-McIntyre discloses the invention as claimed as described in claim 9, **wherein the adaptors are managed as a team and wherein load balancing**

**operations are performed when transmitting data through the adaptors** (Paragraph [0023] of Masuyama discloses the NIDs can be configured into a team and may be used for purposes such as fail-over, redundancy and load balancing).

24. **As to Claim 14**, Masuyama-McIntyre discloses the invention as claimed as described in claim 9, **wherein each adaptor is connected to a different switch to provide redundant paths to the network** (Figure 1 of Masuyama shows two separate NIDs connected to two separate switches).

25. **As to Claim 16**, Masuyama-McIntyre discloses the invention as claimed as described in claim 9, **further comprising:**

**a chassis, wherein the switches are implemented on printed circuit boards in the chassis**

(Paragraph [0015] of Masuyama discloses six server blades, two Ethernet modules and an embedded remote management module enclosed in a highly integrated 3U enclosure); **and**

**a printed circuit board in the chassis on which the circuitry and adaptors are implemented**

(Paragraph [0015] of Masuyama discloses six server blades, two Ethernet modules and an embedded remote management module enclosed in a highly integrated 3U enclosure).

26. **As to Claim 18**, Masuyama discloses **a system in communication with a network, comprising:**

**a chassis** (Paragraph [0015] of Masuyama discloses six server blades, two Ethernet modules and an embedded remote management module enclosed in a highly integrated 3U enclosure);



**a plurality of switch printed circuit boards capable of being inserted in the chassis**

(Paragraph [0015] of Masuyama discloses six server blades, two Ethernet modules and an embedded remote management module enclosed in a highly integrated 3U enclosure);

**a server printed circuit board capable of being inserted in the chassis** (Paragraph [0015] of Masuyama discloses six server blades, two Ethernet modules and an embedded remote management module enclosed in a highly integrated 3U enclosure), **and including:**

**a plurality of adaptors connected to the switch printed circuit boards** (Paragraph [0023] and Figure 1 of Masuyama disclose NID (30a) and NID (30b) to be connected to switch (40) and switch (44) respectively. Then it discloses the other servers may be connected to switches (40 and 44) similarly. Thus it is seen that a plurality of adaptors are connected to each switch);

Masuyama does not explicitly disclose **circuitry executing at least one adaptor device driver providing an interface to the adaptors and an intermediate device driver in communication with the adaptor device drivers, wherein the intermediate device driver causes operations, the operations comprising:**

**managing transmission of data through the adaptors** (Paragraph [0023] of Masuyama discloses the servers containing multiple NIDs for things like fail-over and load balancing. Both of those actions require managing transmission of data through particular adaptors. Thus it is seen that the system manages the transmissions);

Masuyama does not explicitly disclose **sending through the adaptors at least one query to the switch printed circuit boards connected to the adaptor to determine a status of external ports in each queried switch communicating with the network** (Paragraph [0027] of Masuyama discloses the switch detecting link loss on the uplink and causing disruption to the

downlink in order to trigger failover. Thus it is seen that Masuyama discloses detecting switch external port statuses and causing failover in response to such an event);

Masuyama does not explicitly disclose **in response to determining [from the at least one query] that no external ports are operational in one non-operational switch printed circuit board, then indicating not to transmit data to the adaptor connected to the non-operational switch printed circuit board, wherein the adaptor for which indication is made not to transmit data is functioning and capable of transmitting** (Paragraph [0027] and Figure 2 of Masuyama disclose that when the switch detects link loss on the uplink (external port), the fail-over circuit automatically disrupts the communications on the downlink to trigger fail-over to another switch. Then paragraph [0026] discloses that when link loss on the downlink is discovered the system automatically fails-over from one NID to another NID. Thus it is seen that the original NID is still functioning and capable of transmitting since it is the switch that has detected link loss on the uplink);

Masuyama does not explicitly disclose **indicating to transmit data to one adaptor connected to one switch having at least one operational external port in response to determining [from the at least one query] that at least one external port in the switch is operational when the switch was previously indicated as non-operational** (Paragraph [0037] of Masuyama discloses if the connection has been restored on the uplink (previously non-operational becoming operational) the downlink is also restored. This triggers the system to return to normal and allows the original NID to resume operation).

Masuyama does not explicitly disclose circuitry executing at least one adaptor device driver providing an interface to the adaptors and an intermediate device driver in communication with the adaptor device drivers.

However, McIntyre discloses this (Figure 3 and column 6 lines 43-50 of McIntyre disclose 4 NIC drivers supporting 4 NICs each connected to an intermediate driver)

Examiner recites the same rationale to combine used in claim 1.

Masuyama does not explicitly disclose sending through the adaptors at least one query to determine a status of ports.

However, McIntyre discloses this (Column 2 lines 1-20 disclose the intermediate driver instructing the secondary NIC to transmit a directed heartbeat packet to the primary NIC to determine the status)

Examiner recites the same rationale to combine used in claim 1.

Masuyama does not explicitly disclose actions being done in response to the query.

However, McIntyre discloses this (Figure 8 and column 13 lines 35-67 of McIntyre disclose if the intermediate drive detects failure of the primary port, the intermediate driver sends commands to the NIC drivers to cause failover to occur. It is further explained that the status of the ports was detected via a heartbeat packet which is seen to be a query. Column 2 lines 1-20 disclose how the intermediate driver sends these directed heartbeat packets to test the ports)

Examiner recites the same rationale to combine used in claim 1.

27. **As to Claim 19**, Masuyama-McIntyre discloses the invention as claimed as described in claim 18, **wherein the server printed circuit board further includes:**

**a switch map including information associating the adaptors with the switch to which the adaptors connect and a status of the external ports on the switches** (Column 9 lines 50-55 of McIntyre disclose a status table that maintains the status of each of the ports including the NICs), **wherein the intermediate device driver operations update the status of the external ports to the status determined from the at least one query** (Column 10 lines 35-40 of McIntyre disclose the intermediate driver updating the status table according to the heartbeat packets).

Examiner recites the same rationale to combine used in claim 2.

28. **As to Claim 20, Masuyama discloses an article of manufacture comprising a computer readable storage medium having an intermediate device driver executed to communicate with adaptor device drivers providing an interface to adaptors connected to switches, wherein the switches provide communication with a network, and wherein the intermediate device driver is further executed to perform operations, the operations, comprising:**  
**managing transmission of data through the adaptors connected to the switches** (Paragraph [0023] of Masuyama discloses the servers containing multiple NIDs for things like fail-over and load balancing. Both of those actions require managing transmission of data through particular adaptors. Thus it is seen that the system manages the transmissions);  
Masuyama does not explicitly disclose **sending through the adaptors at least one query to the switches connected to the adaptor to determine a status of external ports in each queried switch communicating with the network** (Paragraph [0027] of Masuyama discloses the switch detecting link loss on the uplink and causing disruption to the downlink in order to trigger

failover. Thus it is seen that Masuyama discloses detecting switch external port statuses and causing failover in response to such an event); and

Masuyama does not explicitly disclose **in response to determining [from the at least one query] that no external ports are operational in one non-operational switch, then indicating not to transmit data to the adaptor connected to the non-operational switch** (Paragraph [0027] and Figure 2 of Masuyama disclose that when the switch detects link loss on the uplink (external port), the fail-over circuit automatically disrupts the communications on the downlink to trigger fail-over to another switch. Then paragraph [0026] discloses that when link loss on the downlink is discovered the system automatically fails-over from one NID to another NID. Thus it is seen that the original NID is still functioning and capable of transmitting since it is the switch that has detected link loss on the uplink).

Masuyama does not explicitly disclose sending through the adaptors at least one query to determine a status of ports.

However, McIntyre discloses this (Column 2 lines 1-20 disclose the intermediate driver instructing the secondary NIC to transmit a directed heartbeat packet to the primary NIC to determine the status)

Examiner recites the same rationale to combine used in claim 1.

Masuyama does not explicitly disclose actions being done in response to the query.

However, McIntyre discloses this (Figure 8 and column 13 lines 35-67 of McIntyre disclose if the intermediate drive detects failure of the primary port, the intermediate driver sends commands to the NIC drivers to cause failover to occur. It is further explained that the status of

the ports was detected via a heartbeat packet which is seen to be a query. Column 2 lines 1-20 disclose how the intermediate driver sends these directed heartbeat packets to test the ports)

Examiner recites the same rationale to combine used in claim 1.

29. **As to Claim 21**, Masuyama-McIntyre discloses the invention as claimed as described in claim 20, wherein the operations further comprise:

**maintaining a switch map including information associating the adaptors with the switch to which the adaptors connect and a status of the external ports on the switches** (Column 9 lines 50-55 of McIntyre disclose a status table that maintains the status of each of the ports including the NICs); and

**updating the status of the external ports to the status determined from the at least one query** (Column 10 lines 35-40 of McIntyre disclose updating the status table according to the heartbeat packets).

Examiner recites the same rationale to combine used in claim 2.

30. **As to Claim 23**, Masuyama-McIntyre discloses the invention as claimed as described in claim 22, wherein the operations further comprise:

**performing a failover to the switch that is operational from the switch that is non-operational in response to determining from the at least one query that one switch is non-operational** (Paragraph [0027] and Figure 2 of Masuyama discloses when switch (40) detects link loss on the uplink, the fail-over automatically occurs to trigger fail-over to switch (44).

Then figure 8 and column 13 lines 35-67 of McIntyre disclose if the intermediate drive detects

failure of the primary port, the intermediate driver sends commands to the NIC drivers to cause failover to occur. It is further explained that the status of the ports was detected via a heartbeat packet which is seen to be a query. Column 2 lines 1-20 disclose how the intermediate driver sends these directed heartbeat packets to test the ports); and

**performing a failback to the switch that is determined to have at least one operational external port when the switch was previously indicated as non-operational** (Paragraph [0037] of Masuyama discloses that when the connection has been restored on the uplink switch (40) is returned to normal mode which similarly causes the original NID to resume operation. Then figure 8 and column 13 lines 35-67 of McIntyre disclose if the intermediate drive detects failure of the primary port, the intermediate driver sends commands to the NIC drivers to cause failover to occur. It is further explained that the status of the ports was detected via a heartbeat packet which is seen to be a query. Column 2 lines 1-20 disclose how the intermediate driver sends these directed heartbeat packets to test the ports).

Examiner recites the same rationale to combine used in claim 1.

31. **As to Claim 24**, Masuyama-McIntyre discloses the invention as claimed as described in claim 20, **wherein the adaptors are managed as a team and wherein load balancing operations are performed when transmitting data through the adaptors** (Paragraph [0023] of Masuyama discloses the NIDs can be configured into a team and may be used for purposes such as fail-over, redundancy and load balancing).

Art Unit: 2456

32. **As to Claim 25**, Masuyama-McIntyre discloses the invention as claimed as described in claim 20, **wherein each adaptor is connected to a different switch to provide redundant paths to the network** (Figure 1 of Masuyama shows two separate NIDs connected to two separate switches).

33. **As to Claim 26**, Masuyama-McIntyre discloses the invention as claimed as described in claim 20, **wherein the operations are performed by an intermediate device driver in communication with adaptor device drivers** (Figure 3 and column 6 lines 43-50 of McIntyre disclose 4 NIC drivers supporting 4 NICs each connected to an intermediate driver).

Examiner recites the same rationale to combine used in claim 1.

34. Claims 8, 17 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Masuyama-McIntyre and further in view of US Pub. No. 2002/0004912 A1 to Fung (hereinafter "Fung").

35. **As to Claim 8**, Masuyama-McIntyre discloses the invention as claimed as described in claim 1. Masuyama-McIntyre does not explicitly disclose **wherein the at least one query comprises an SNMP query of the external port link status**.

However, Fung discloses this (Paragraph [0141] of Fung discloses a system where SNMP message are utilized for status reporting of switches)

It would have been obvious to one of ordinary skill in the art at the time of invention to combine the method of claim 1 as disclosed by Masuyama-McIntyre, with using SNMP



messages as disclosed by Fung. One of ordinary skill in the art would have been motivated to combine because it is disclose that using SNMP for switch management is a known industry standard (paragraph [0141] of Fung).

36. **As to Claim 17**, Masuyama-McIntyre discloses the invention as claimed as described in claim 9. Masuyama-McIntyre does not explicitly disclose **wherein the at least one query comprises an SNMP query of the external port link status**.

However, Fung discloses this (Paragraph [0141] of Fung discloses a system where SNMP message are utilized for status reporting of switches)

Examiner recites the same rationale to combine used in claim 8.

37. **As to Claim 27**, Masuyama-McIntyre discloses the invention as claimed as described in claim 20. Masuyama-McIntyre does not explicitly disclose **wherein the at least one query comprises an SNMP query of the external port link status**.

However, Fung discloses this (Paragraph [0141] of Fung discloses a system where SNMP message are utilized for status reporting of switches)

Examiner recites the same rationale to combine used in claim 8.

### ***Conclusion***

38. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KEVIN S. MAI whose telephone number is (571)270-5001. The examiner can normally be reached on Monday through Friday 7:30 - 5:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bunjob Jaroenchonwanit can be reached on 571-272-3913. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/K. S. M./

Examiner, Art Unit 2456

/Jeffrey Pwu/

Supervisory Patent Examiner, Art Unit 2446